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ALEXANDER L. STEVAS,

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

No. 83-187

KONSTANTINE TSANOS and
LITSA TSANOS,

Petitioner,

v.

DIVISION OF ADMINISTRATION,
STATE OF FLORIDA DEPARTMENT
OF TRANSPORTATION,

Respondent.

MEMORANDUM OPPOSING PETITION FOR CERTIORARI

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MEMORANDUM OPPOSING CERTIORARI

Respondent, DIVISION OF ADMINISTRATION, STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION, submits the following representations to the Court in opposition to the Petitioners' application for writ of certiorari:

1. The Petitioners have candidly admitted that there were no federal questions specifically raised when this cause was presented at the trial level. (Petition, p. 25) The Petitioners have inaccurately represented that the federal issues were raised upon appeal of the trial court judgment. Attached as Exhibit "A" to this memorandum is a copy of a portion of the Petitioners' brief submitted to the Florida District Court of Appeal. The issues to be resolved must be set out in the table of contents of the brief, per Florida Rule of

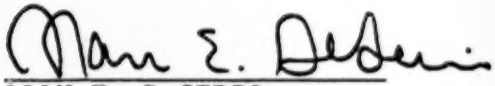
Appellate Procedure 9.210(b)(1). The issues listed by the Petitioners made no reference to any federal question that was to be addressed by the Florida District Court of Appeal. It must therefore be presumed that no federal question was considered or disposed of by the district court when it rendered the per curiam decision without opinion.

2. The Petitioners first made mention of a federal question in its motion for rehearing to the Florida District Court of Appeal. At this point in time it was improper to raise new issues to be considered by the appellate court. Florida Rule of Appellate Procedure 9.330(a), which controls the use of a motion for rehearing, cannot be used to raise new issues which were not previously raised in the appeal proceedings. *Florida First National Bank at Key West v. Fryd Construction Corp.*, 245 So.2d 883, 888

(Fla. 3rd DCA 1971) Since the federal issues were not properly raised in the petition for rehearing, it must be presumed that the federal issues were not considered or disposed of when the court entered its order denying the motion for rehearing.

Since the Petitioners failed to properly raise any federal question in either the trial or appellate court, and there is nothing from which this Court can conclude that a federal question was considered or disposed of, the Respondent respectfully suggests that this Court should deny the petition for writ of certiorari.

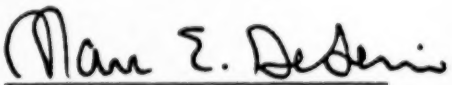
Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 19th day of September, 1983, to ERNEST A. ALEXAS, ESQUIRE, 2170 S.E. 17th Street, Suite 302, Ft. Lauderdale, Florida 33316.



ALAN E. DeSERIO

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, FOURTH DISTRICT

CASE NO. 82-1223

KONSTANTINE TSANOS and LITSA TSANOS,

Appellants,

vs.

DIVISION OF ADMINISTRATION, STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION,

Appellee.

APPEAL FROM THE CIRCUIT COURT
IN AND FOR BROWARD COUNTY, FLORIDA

INITIAL BRIEF OF APPELLANTS, KONSTANTINE TSANOS and LITSA TSANOS.

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